

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

May 13, 2011

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

PSF No.: 10od-217

OAHU

Termination of Revocable Permit No. 7481, Denial of Request to Issue Revocable Permit for Agriculture Purposes; Kalauao, Ewa, Oahu, Tax Map Key: (1) 9-8-011:006

REQUEST:

Termination of Revocable Permit No. 7481 and denial of request to issue revocable permit for agriculture purposes

LEGAL REFERENCE:

Sections 171-55, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands situated at Kalauao, Ewa, Oahu, identified by Tax Map Key: (1) 9-8-011:006, as shown on the attached map labeled **Exhibit A and B**.

AREA:

7.613 acres, more or less.

ZONING:

State Land Use District: Urban
City & County of Honolulu LUO: P2 and R5

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act
DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: No

CURRENT USE STATUS:

Encumbered by Revocable Permit No. (RP) 7481, Wallace K. Lean, Permittee, for general agriculture purposes.

CHARACTER OF USE:

Agriculture purposes.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

The request does not involve the use of State lands. Therefore, the request does not trigger an environmental assessment.

BACKGROUND:

The subject parcel was encumbered by General Lease No. S- 3389 to Oahu Sugar Company, Limited since 1951. Around 1970, GL-3389 was cancelled because the lessee was desirous of canceling the lease due to abandonment of its agricultural operation.

In 1986, Revocable Permit No.S-6324 was issued to Richard H.S. Lee for general agriculture purpose. The permit was terminated at the request of the permittee in December 1989.

Starting January 1990, Wallace K. Lean, started to lease the subject parcel under RP-6694 for general agriculture purposes. On October 23, 2009, under agenda item D-12, the Board authorized the issuance of new RP to 159 current permittees as a result of replacing the permit with updated permit conditions. A new revocable permit under RP7481 was issued to Wallace K. Lean effective February 1, 2010. In July 2010, Wallace K. Lean passed away.

Since the death of Wallace K. Lean, staff has contacted his son, Wallace K. Lean, III, (hereinafter called "Mr. Lean"), about the family's plan toward the subject property. According to Mr. Lean, he has been helping his father on the State property since the permit was issued in January 1990 and has continued to maintain the premises after his father's death in July 2010. Mr. Lean has submitted an application to lease the subject property for agriculture purposes. Meanwhile, the Department received three applications from the neighboring owners, Angela Kaaihue of (1) 9-8-073:002, and WG Minami, Inc. of (1) 9-8-011:014, and Randall Tanaka [Note: Mr. Tanaka does not own any land in the vicinity] who are also interested in leasing the subject property.

Over the past few months, staff has discussed with both Mr. Lean and Ms. Kaaihue regarding the disposition of the subject property. There are disagreements between Mr. Lean and Ms. Kaaihue regarding the use of the dirt road over Ms. Kaaihue's property as an access to the subject State property. Based on the staff preliminary research described below, the subject

State property requires a legal access over the dirt road over Ms. Kaaihue's property. Since Ms. Kaaihue does not appear willing to grant Mr. Lean an access easement, and Mr. Lean's apparent use of Ms. Kaaihue's property to access the State parcel is causing problems, therefore, staff believes it is best to terminate the use of the State parcel until such time as access can be acquired.

Staff notes that for any future disposition of the subject State property, the issue of access would need to be clarified. Staff is pending a formal abstract from the staff abstractor regarding State's legal access serving the subject State property. At this time, Ms. Kaaihue is not willing to grant an access easement to the State parcel.

Legal access for the subject State property

Staff notes that the subject State property abuts Ms. Kaaihue's property, identified as tax map key (1) 9-8-073:002, and further registered as Land Court Application No. 950. Pursuant to Map 1 of the Land Court Application 950, the following paragraph is noted on the Return of the Surveyor of the Territory dated January 10, 1935 (**Exhibit C1**):

“In accordance with oral stipulation between the attorneys for applicants and the Territory of Hawaii there has been inserted on the map along the line of the Waimalu Valley Road the writings “Easement (16 ft. wide) in favor of the Territory of Hawaii” between Exclusion 11 and Exclusion 5 and the writings “Easement (10 ft. wide) in favor of the Territory of Hawaii” for the road running mauka beyond said Exclusion 5.”

According to Map 69 of Land Court Application 950 dated February 4, 1983, portions of the Waimalu Valley Road easement were cancelled. A copy of the Consent and Joinder to the said cancellation signed by the State is attached as **Exhibit C2**. The cancelled portions of easement are shown on Exhibit B. Staff has checked with the City and County of Honolulu, Department of Planning and Permitting-Subdivision Branch as well as with their Achieves Branch regarding the subdivision process in 1983. Staff has been unsuccessful in locating any other records or documents pertaining to the reason for canceling the easement which was in favor of the State or a substitute easement serving the subject State property.

There is an Easement 341 designated for access purposes and shown on Map 69 of Land Court Application 950. This Easement 341 would be able to serve the subject State property. To date, staff cannot find any records of granting of easement over Easement 341 to the State.

Apparently, the subject State property does not possess any legal access to the public road. However, the final determination for State's access will be verified by the staff abstractor.

Termination of Revocable Permit 7481

Since RP 7481 was issued to the former permittee in his personal capacity and such permit is not transferable, staff recommends the Board authorize the termination of Revocable Permit 7481 as of the Board date due to the death of the former permittee.

Future Disposition

The subject State property may be disposed by long term lease with an acquisition of an access easement over the neighboring private property. Alternatively, selling the subject State land as remnant is also an option. However, either of these options will not be appropriate until the staff abstractor finalized the State's access right.

While the State abstractor is researching on the access issue, staff believes that a disposition before the final determination is available would not be in order. Therefore, staff recommends the Board deny requests received by the Department for the issuance of a new revocable permit for agriculture purposes. Staff will bring the case to the Board when the State's access right is confirmed by the staff abstractor.

RECOMMENDATION: That the Board:

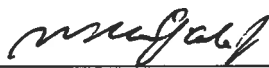
1. Authorize the termination of Revocable Permit No. S-7481 as of the Board date.
2. Deny requests received from Ms. Angela Kaaihue, WG Minami, Inc., and Randall Tanaka regarding the issuance of a new revocable permit over the subject State property for agriculture purposes.

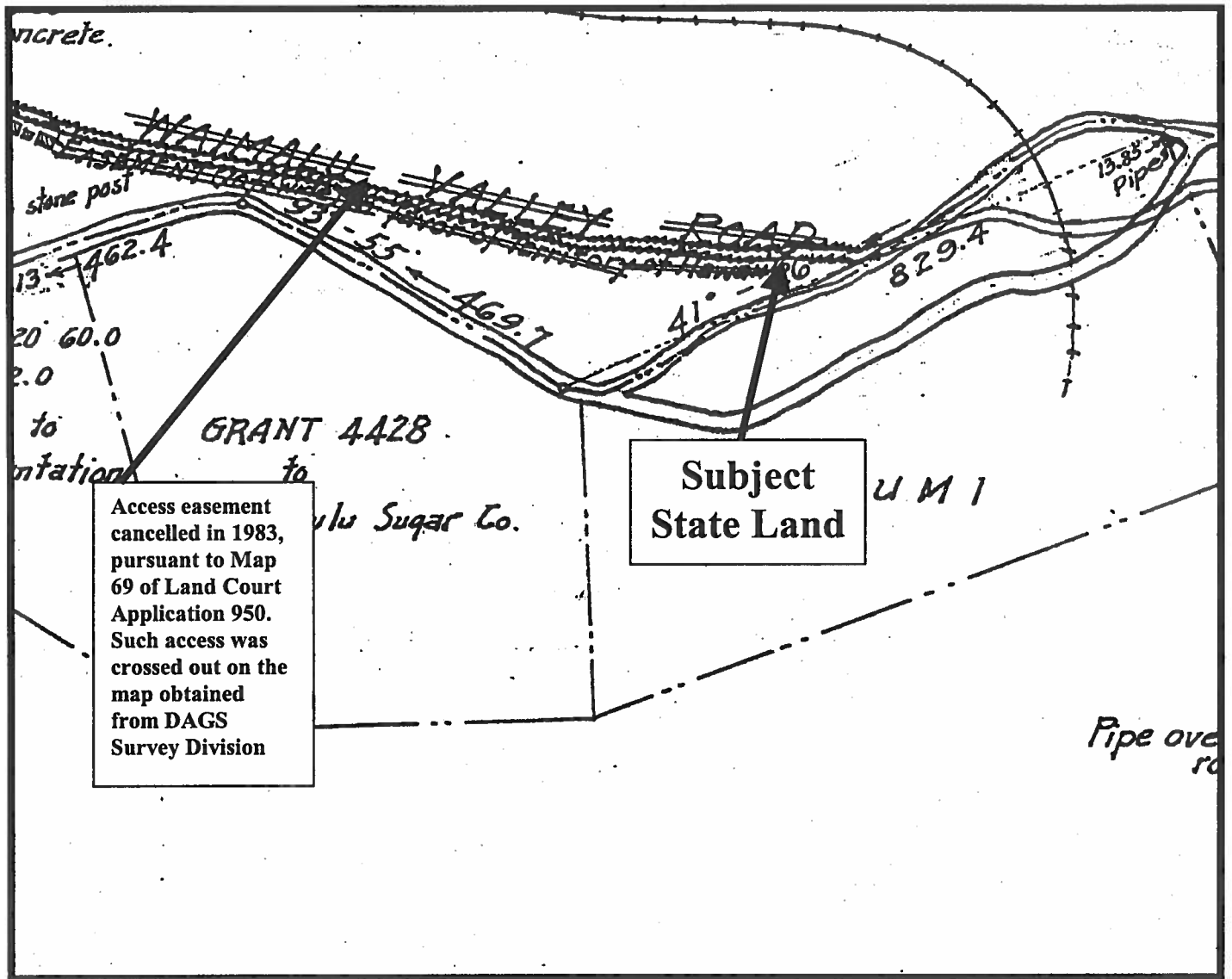
Respectfully Submitted,



Steve Lau
Land Agent

APPROVED FOR SUBMITTAL:


William J. Aila, Jr., Chairperson



TMK (1) 9-8-011:006

EXHIBIT B

IN THE LAND COURT OF THE TERRITORY OF HAWAII

In the Matter of the Application)

of

EDITH AUSTIN; MABEL FRAZAR
AUSTIN, LINDSLEY AUSTIN and
HARRY HASKELL BENNIS, Trustees
Under the Will and of the Estate)
of Walter Austin, deceased;
LINDSLEY AUSTIN; JOHN FRAZAR
AUSTIN; and DOROTHY BRADSTREET)
AUSTIN, for registration of)
title to certain lands situate)
at Waimalu, Ewa, Oahu, T.H.)

Application 950
(Amended)

RETURN OF THE SURVEYOR OF THE TERRITORY
IN THE MATTER OF AMENDMENT

To the Honorable
Judge of the Land Court,
Territory of Hawaii,

Pursuant to order or orders duly made and issued out of said Honorable Court, hereinafter designated, referring the map filed October 18, 1929, to the Surveyor of the Territory of Hawaii with instructions to cause the same to be amended therewith, the undersigned, the Surveyor of the Territory of Hawaii, begs to report,

That the map and description referred to, has been amended in accordance with:

Order of the Court dated November 17, 1934 and
Order of the Court dated December 7, 1934.

And Further, that in order to reconcile the descriptions of surveys and map with the above Orders of the Court, the following additional amendments have been made:

1. In Order of Court dated November 17, 1934, in the description of survey of EXCLUSION 9, wherever the word and number "Lot 3" occurs has been changed to "Exclusion 11" and that the description on the map corrected accordingly;

2. In Order of Court dated November 17, 1934, in "(a)" referring to Course 274 of the Main Description, the net area has been corrected to read "2924.83 acres", and "Exclusions 1 to 9 inclusive" corrected to read "Exclusions 1 to 11", and the map and the description in the map corrected accordingly;

3. In accordance with oral stipulation between the attorneys for applicants and the Territory of Hawaii there has been inserted on the map along the line of the Waimalu Valley Road the writings "Easement (16 ft. wide) in favor of the Territory of Hawaii" between Exclusion 11 and Exclusion 5 and the writings "Easement (10 ft. wide) in favor of the Territory of Hawaii" for the road running mauka beyond said Exclusion 5;

4. In Lot 2 of deeds referred to in Order of Court dated December 7, 1934, the distance of the first course of the description of said Lot 2 is 365.6 feet in the deeds and 365.7 feet in the Land Court survey. This difference is immaterial and does in no way affect the boundaries of the land therein described;

Note: - Lot 1 in deed = Lot 4-A in 1d Ct. Map
Lot 2 " = -1-, 4-C "

EXHIBIT "C1"

5. In accordance with Order of the Court dated November 17, 1934, and in compliance with the Rules of the Land Court, descriptions of surveys of Exclusions 10 and 11 have been written in on the map.

6. And that the original deeds of conveyance referred to in said Order of the Court of December 7, 1934, are being herewith returned and the map in the above entitled matter is being held in this office pending further orders of the Court.

Dated at Honolulu, this 10th day of January, 1935.

Examined by:

Assistant. *Revised*

W. B. Bailey
Surveyor, Territory of Hawaii. *W*

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RECEIVED from the Office of the Territorial Surveyor
blue prints of, and the approved tracing map in the
above entitled matter, on which the amendment has been made.

Honolulu, T.H.,
January _____, 1935.

Registrar of the Land Court.

IN THE LAND COURT OF THE STATE OF HAWAII

In the Matter of the Application

of

EDITH AUSTIN AND OTHERS

to register and confirm title to
land situate at Waimalu, District
of Ewa, City and County of Honolulu,
State of Hawaii

LAND COURT APPLICATION
NO. 950

CONSENT AND JOINDER

TO THE HONORABLE, THE PRESIDING JUDGE OF THE LAND COURT OF
THE STATE OF HAWAII:

The STATE OF HAWAII, the holder of that certain easement over and across Waimalu Valley Road Easement (16.00 feet and 10.00 feet wide) affecting Lot 1 as shown on Map 1 and Lot 881-B as shown on Map 58, at Waimalu, Ewa, Oahu, Hawaii, hereby joins in the Petition for Subdivision of Lot 881-B into Lots 881-B-1 to 881-B-5 inclusive; the Designation of Easements A to D, inclusive, affecting Lot 881-B-1 and Easements E to H, inclusive, affecting Lot 881-B-5; the Cancellation of Easement M as shown on Maps 16 and 58; and the Cancellation of Waimalu Valley Road Easement submitted by VENTURE FIFTEEN, INC., a Hawaii corporation, and hereby consents to the cancellation of Waimalu Valley Road Easement (16.00 feet and 10.00 feet wide) affecting said Lot 1 as shown on Map 1 and Lot 881-B as shown on Map 58 at Waimalu, Ewa, Oahu, Hawaii, and to the prayer contained in said Petition.

DATED at Honolulu, Hawaii, JAN 21 1983

STATE OF HAWAII
By BOARD OF LAND AND NATURAL
RESOURCES

APPROVED AS TO FORM:

By

Chairman and Members

EXHIBIT "C2"